



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

SUPREME COURT OF APPEALS OF VIRGINIA.

NORFOLK RY. & LIGHT CO. v. WILLIAR.

Dec. 14, 1905.

[52 S. E. 380.]

Husband and Wife—Injuries to Wife—Damages.—Under the married woman's act (Acts 1899-1900, p. 1240, c. 1139 [Va. Code 1904, p. 1138]), the husband is entitled to the services of his wife; and, in an action by a wife for injuries, it is error to instruct that, in assessing the damages, the jury can consider the diminution, if any, of the plaintiff's physical ability to perform the ordinary duties of life.

Error to Law and Chancery Court of City of Norfolk.

Action by Margie E. Williar against the Norfolk Railway & Light Company. From a judgment for plaintiff, defendant brings error. Reversed.

White, Tunstall & Thom, for plaintiff in error.

R. B. Tibbett and Brooke & Elliott, for defendant in error.

HARRISON, J. This action was instituted by Margie E. Williar, a married woman, to recover damages for personal injuries caused, as alleged, by a collision between two cars of the plaintiff in error, in one of which she was a passenger.

The declaration charges that by said collision, without contributing thereto by any act or neglect on her part, and as the direct result thereof, she was badly bruised, etc., and suffered therefrom great nervous shock, physical pain, and anguish of mind, and as the direct result thereof she had become permanently disabled and a helpless invalid.

The trial resulted in a verdict in favor of the plaintiff for \$4,500, which the court of law and chancery of the city of Norfolk refused to set aside, and entered thereon the judgment to which this writ of error was awarded.

The first assignment of error is to the action of the court in giving for the plaintiff the following instruction:

"The court instructs the jury that, if they find for the plaintiff, they may, in assessing damages, take into consideration her physical and mental suffering, if any, arising from said injury; the diminution, if any, of her physical ability to perform the

ordinary duties of her life, caused by said injury; and whether her said injuries are of a permanent or temporary character."

This court has held that, notwithstanding the provisions of chapter 103, p. 1138, of the Code of 1904, the husband is entitled to the services of his wife. *Richmond, etc., Co. v. Bowles*, 92 Va. 738, 24 S. E. 388; *A. & D. R. Co. v. Ironmonger*, 95 Va. 625, 29 S. E. 319. These cases dealt with the law touching married women and their estates as it was under chapter 103 of the Code of 1904. We now have a new married woman's act. See Acts 1899-1900, p. 1240, c. 1139. A careful reading of this later act, however, discloses no ground affecting the view taken by this court in the cases cited. The new act is no broader than the prior law, and under it, therefore, the husband is still entitled to the services of his wife.

This being so, we are of opinion that it was error to instruct the jury that in assessing damages they could take into consideration the diminution, if any, of the plaintiff's physical ability to perform the ordinary duties of her life, for the reason that "the ordinary duties of her life" embrace elements of damage which would be properly recoverable by the husband, and which constitute no part of the wife's separate estate.

Granting it to be true, as contended, that the ordinary duties of a married woman's life include duties in which she has a personal interest, separate and apart from her husband's right to her services, still the language also includes, as already said, those duties the performance of which constitute services belonging to the husband and which he alone had the right to recover. The only testimony as to a diminution in her ability to perform her ordinary duties related to her impaired capacity for attending to her household duties, and as to these her husband was entitled to her services. The instruction made no discrimination, but included all the ordinary duties of life, and therefore it was equivalent to telling the jury that they could find, in a case brought by her alone, damages for that for which the husband alone could recover.

As said in a New York case, damages for the injury to her person belong to her, because the statute has given them to her, but damages for the loss of her services belong to her husband,

because the common law gave them to him and the statute has not taken them away. *Blaechinska v. Home for Little Wanderers*, 130 N. Y. 497, 29 N. E. 755, 15 L. R. A. 215.

The action of the court in refusing to give the following instruction, asked for by the defendant company, is also assigned as error:

"The court instructs the jury that if they believe from the evidence that prior to the date of the alleged accident, namely, the 4th day of December, 1902, the plaintiff had pseudo angina pectoris, or any nervous disorder, then she cannot recover under the declaration and proofs in this cause on account of such pseudo angina pectoris, or other nervous disorder, existing before said accident, or any aggravation thereof produced by said accident."

It is contended that the declaration and the proof adduced in its support were expressly based upon the theory that the plaintiff, before the accident, was well, hearty, and healthy, and had no pseudo angina pectoris, nor any nervous disorder, but that those troubles had been produced by the accident and were the direct result of it, and, therefore, that the refusal to give this instruction was a refusal to tell the jury that the plaintiff was to be restrained by the case she had claimed and attempted to sustain, and could not recover upon another and different case. It is further insisted that there can as stated in the instruction, be no recovery for the aggravation of an existing disease, where the declaration is framed upon the theory that the particular disease was produced by the injuries, and not merely aggravated thereby.

For the error already pointed out the case will have to be remanded for a new trial, and therefore we forbear to express an opinion upon this last-mentioned assignment of error, for the reason that the plaintiff will, before another trial, have an opportunity to amend her declaration, and thus avoid the difficulty suggested by the court's refusal to give the instruction under consideration.

The judgment complained of must be reversed, the verdict of the jury set aside, and the case remanded for a new trial, to be had not in conflict with the views expressed in this opinion.

Note.—The process of emancipation from the virtual slavery, in which the common law held the married woman, to the state of complete equality in her property rights with the man has been slow and fraught with many struggles. The legal battles, both in the legislative and judicial forum, are becoming dim memories in the minds of most lawyers. It is the common opinion that under the present state of the law, a married woman is virtually a feme sole, in so far as her financial relations with her husband are concerned. To such as hold this opinion, the decision in the principal case will come in the nature of a surprise. It is there held that, under our present married woman's law, the husband is entitled to the services of his wife, and that when she has been negligently injured and sues to recover for such injury, an instruction to the jury in regard to the diminution of her ability to perform the ordinary duties of life, which omits to notice that the husband is entitled to the wife's services, is erroneous.

It is certainly the policy of the present law to emancipate the woman, and, as to her property rights, to make her at least equal to her husband. On the contrary, as all of the laws in regard to the married woman's property rights are in derogation of the common law, they must be strictly construed; and as at common law the husband was entitled to the services of his wife, he is still entitled to them unless the married woman's law expressly or impliedly deprives him thereof. That the law still contemplates that the husband is entitled to some of the services of his wife, it must be admitted; otherwise the matrimonial relations existing between husband and wife would be stripped of fundamental and essential features. But it would seem that when the law allows a married woman to trade on her separate account, to contract or to be contracted with, to hold property, to sue and to be sued, it is necessarily within the contemplation of the law that a part of the services of a wife is due to those relations growing out of the aforesaid powers. If therefore her own property and her own peculiar relations demand a part of her services, it would seem that she is certainly entitled, in suing for a personal injury, to be paid for the diminution of her physical ability to perform the ordinary duties in regard to her own property, and in regard to those relations of life growing out of the rights given her by the married woman's law.

C. B. G.